UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-364 (Review)

ASPIRIN FROM TURKEY

DETERMINATION

On the basis of the record[1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty order on aspirin from Turkey would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

BACKGROUND

The Commission instituted this review on March 1, 1999 (64 F.R. 10012) and determined on June 3, 1999, that it would conduct an expedited review (64 F.R. 31608).

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 29, 1999. The views of the Commission are contained in USITC Publication 3215 (July 1999), entitled *Aspirin from Turkey: Investigation No. 731-TA-364 (Review)*.

By order of the Commission.

Donna R. Koehnke
Secretary

Issued:

---

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioners Carol T. Crawford and Thelma J. Askey dissenting, determining that revocation of the antidumping duty order would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

VIEWS OF THE COMMISSION

Based on the record in this five-year review, we determine under section 751(c) of the Tariff Act of 1930, as amended ("the Act"), that revocation of the antidumping duty order covering aspirin from Turkey would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[1]

I. BACKGROUND

In August 1987, the Commission determined that an industry in the United States was being injured by reason of imports of bulk aspirin from Turkey that were being sold at less than fair value.[2] On August 25, 1987, the Department of Commerce ("Commerce") issued an antidumping duty order on imports of bulk aspirin from Turkey.[3] The Commission instituted this five-year review on March 1, 1999.[4]

In five-year reviews, the Commission initially determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties -- domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.[5] If the Commission finds the responses from either group of interested parties to be inadequate, the Commission may determine, pursuant to section 751(c)(3)(B) of the Act, to conduct an expedited review unless it finds that other circumstances warrant a full review.

In this review, Rhodia, Inc. ("Rhodia"), the sole domestic producer of bulk aspirin, filed a response to the notice of institution.[6] No foreign producer, U.S. importer, or other interested party responded to the Commission's notice of institution.

On June 3, 1999, the Commission determined that the domestic interested party group response to its notice of institution was adequate.[7] The Commission further determined that the respondent interested party group response was inadequate because no foreign producers or U.S. importers of subject merchandise responded to the Commission's notice of institution. Pursuant to section 751(c)(3)(B) of the Act, the Commission voted to conduct an expedited review.[8]

---

[1] Commissioners Crawford and Askey dissenting. Commissioners Crawford and Askey determine that revocation of the antidumping duty order covering aspirin from Turkey would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See Dissenting Views of Commissioners Carol T. Crawford and Thelma J. Askey. They join in sections I. - III. B. of these views except as otherwise noted.

[2] Bulk Aspirin from Turkey, Inv. No.731-TA-364 (Final), USITC Pub. 2001 (August 1987) ("Original Determination").

[3] 52 Fed. Reg. 32030 (Aug. 25, 1987).

[4] 64 Fed. Reg. 10012 (Mar. 1, 1999).

[5] See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

[6] Response of Rhodia, Inc. to the Commission's Notice of Institution of a Five-Year (Sunset) Review ("Response of Rhodia").

[7] See Explanation of Commission Determination on Adequacy in Bulk Aspirin from Turkey; see also 64 Fed. Reg. 31608 (June 11, 1999). The Commission's determination was unanimous.

[8] 19 U.S.C. § 1675(c)(3)(B).

On July 7, 1999, Rhodia filed comments pursuant to 19 C.F.R. § 207.62(d), arguing that revocation of the antidumping duty order on bulk aspirin from Turkey would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.[9]

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making its determination under section 751(c), the Commission defines the "domestic like product" and the "industry."[10] The Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle."[11] In its final five-year review determination, Commerce defined the subject merchandise as

> [A]cetylsalicylic acid (aspirin) from Turkey, containing no additives, other than inactive substances (such as starch, lactose, cellulose, or coloring material), and/or active substances in concentrations less than that specified for particular non-prescription drug combinations of aspirin and active substances as published in the Handbook of Non-Prescription Drugs, eighth edition, American Pharmaceutical Association, and is not in tablet, capsule, or similar forms for direct human consumption. This product is currently classifiable under the Harmonized Tariff Schedule ("HTS") of the United States item numbers 2918.22.10 and 3003.90.00. The HTS item numbers are provided for convenience and customs purposes only. The written description remains dispositive.[12]

In its original determination, the Commission defined the domestic like product as all bulk aspirin.[13] None of the additional information collected in this review warrants a departure from that definition. Accordingly, based on the facts available, we define the domestic like product as all bulk aspirin.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion

---

[9] Final Comments of Rhodia (July 7, 1999) ("Rhodia's Comments").

[10] 19 U.S.C. § 1677(4)(A).

[11] 19 U.S.C. § 1677(10). See Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 96-249 at 90-91 (1979).

[12] 64 Fed. Reg. 3628 (July 6, 1999). The scope in the original investigation did not include HTS 3003.90.00. Commerce recently decided, at the urging of the domestic producer, that the written description of the scope covered a product represented by both HTS 2918.22.10 and 3003.90.00. Commerce confirmed with the U.S. Customs Service that both HTS item numbers were appropriate. Id. This change does not have any impact on the Commission's like product analysis because the written description has remained the same, and the written description, not the HTS reference, determines the scope of the investigation.

[13] Original Determination at 4.

of the total domestic production of that product."[14] In this review, we find that the domestic industry consists of the current sole domestic producer of bulk aspirin, Rhodia.[15]

III. REVOCATION OF THE ORDER ON BULK ASPIRIN IS LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME[16]

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order "would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time."[17] The Uruguay Round Agreements Act ("URAA") Statement of Administrative Action ("SAA") states that "under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo -- the revocation [of the order] . . . and the elimination of its restraining effects on volumes and prices of imports."[18] Thus, the likelihood standard is prospective in nature.[19] The statute states that "the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time."[20] According to the SAA, a "'reasonably foreseeable time' will vary from case-to-case, but normally will exceed the 'imminent' time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations]."[21] [22]

---

[14] 19 U.S.C. § 1677(4)(A).

[15] At the time of the original determination, there were four U.S. producers of bulk aspirin: Dow Chemical Company, Monsanto Chemical Company, Norwich-Eaton, and Sterling Drug. CR at I-6-7, PR at I-5. Since that time, the bulk aspirin industry has consolidated, and Rhodia is the sole remaining domestic producer. CR at I-7, PR at I-5.

[16] Commissioners Crawford and Askey dissenting. They join in sections III A & B.

[17] 19 U.S.C. § 1675a(a).

[18] SAA, H.R. Rep. No. 103-316, Vol. I, at 883-84 (1994). The SAA states that "[t]he likelihood of injury standard applies regardless of the nature of the Commission's original determination (material injury, threat of material injury, or material retardation of an industry)." SAA at 883.

[19] While the SAA states that "a separate determination regarding current material injury is not necessary," it indicates that "the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic.] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked." SAA at 884.

[20] 19 U.S.C. § 1675a(a)(5).

[21] SAA at 887. Among the factors that the Commission should consider in this regard are "the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities." Id.

[22] In analyzing what constitutes a reasonably foreseeable time, Commissioners Crawford and Koplan examine all the current and likely conditions of competition in the relevant industry. They define "reasonably foreseeable time" as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, they consider all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may

(continued...)

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to "consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked."[23] It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.[24] [25]

Section 751(c)(3) of the Act and the Commission's regulations provide that in an expedited five-year review the Commission may issue a final determination "based on the facts available, in accordance with section 776."[26] [27] As noted above, no respondent interested parties responded to the Commission's notice of institution. Accordingly, we have relied on the facts available in this review, which consist primarily of the record in the original investigation, limited information collected by Commission staff since the institution of this review, and information submitted by Rhodia.

---

[22] (...continued)
only manifest themselves in the longer term. In other words, their analysis seeks to define "reasonably foreseeable time" by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

[23] 19 U.S.C. § 1675a(a)(1).

[24] 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission's determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

[25] Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings "the findings of the administrative authority regarding duty absorption." 19 U.S.C. § 1675a(a)(1)(D). To date, Commerce has not issued any duty absorption findings in this case. 64 Fed. Reg. 36328, 36330 (July 6, 1999).

[26] 19 U.S.C. § 1675(c)(3)(B); 19 C.F.R. § 207.62(e). Section 776 of the Act, in turn, authorizes the Commission to "use the facts otherwise available" in reaching a determination when: (1) necessary information is not available on the record or (2) an interested party or any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a). The statute permits the Commission to use adverse inferences in selecting from among the facts otherwise available when an interested party has failed to cooperate by acting to the best of its ability to comply with a request for information. 19 U.S.C. § 1677e(b). Such adverse inferences may include selecting from information from the record of our original determination and any other information placed on the record. Id.

[27] Chairman Bragg and Commissioners Koplan and Askey note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but emphasize that such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. "[T]he Commission balances all record evidence and draws reasonable inferences in reaching its determinations." SAA at 869 [emphasis added]. Practically speaking, when only one side has participated in a five-year review, much of the record evidence is supplied by that side, though that data is supplemented with publicly available information. We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties' suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. "In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive." Id.

For the reasons stated below, we determine that revocation of the antidumping duty order on bulk aspirin would be likely to lead to continuation or recurrence of material injury to the domestic bulk aspirin industry within a reasonably foreseeable time.[28] [29]

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if the order is revoked, the statute directs the Commission to evaluate all relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[30] In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for bulk aspirin.

The demand for bulk aspirin is derived from the demand for any finished tablet containing aspirin.[31] Additionally, aspirin competes with acetaminophen and ibuprofen in the finished analgesics market.[32] Chemically, however, there are no direct substitute products for bulk aspirin.[33] The demand for aspirin has grown modestly in recent years, largely because of aspirin's use as a preventative measure against second heart attacks.[34]

Over the last decade, the domestic industry producing bulk aspirin went through two major consolidations. In 1987, four firms comprised the domestic industry: Dow Chemical Company ("Dow"), Monsanto Chemical Company ("Monsanto"), Norwich-Eaton, and Sterling Drug.[35] In 1989, Rhone-Poulenc S.A. ("Rhone-Poulenc") acquired the analgesics business of Monsanto, including Monsanto's bulk aspirin manufacturing facility in St. Louis, Missouri. In 1994, Bayer Corp. acquired Sterling Drug and closed that company's bulk aspirin production operations. In the following year, Norwich-Eaton ceased production of bulk aspirin and began to source its aspirin requirements from Rhone-Poulenc. In late 1995, Rhone-Poulenc entered into an agreement to acquire certain assets of Dow's salicylates businesses, including Dow's inventory of bulk aspirin as well as its customer lists.[36] These structural changes culminated in an industry that was reduced from four to one producer by the end of 1996. Rhodia was formed in 1997 following a reorganization by Rhone-Poulenc. Rhone-Poulenc retains 70 percent ownership of Rhodia.[37]

All bulk aspirin sold in the United States must meet the specifications defined in the official monograph of United States Pharmacopoeia (USP) 23.[38] Bulk aspirin may be purchased in different forms: pure aspirin crystals, typically available in different granular (mesh) sizes; granular 100 percent aspirin;

---

[28] Vice Chairman Miller and Commissioner Hillman emphasize that they have reached this conclusion in the absence of contrary evidence or argument from respondent interested parties.

[29] Commissioners Crawford and Askey determine that revocation of the antidumping duty order covering aspirin from Turkey would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See Dissenting Views of Commissioners Carol T. Crawford and Thelma J. Askey.

[30] 19 U.S.C. § 1675a(a)(4).

[31] See Rhodia's Comments at 10-11.

[32] CR at I-12, P.R. at I-10.

[33] See Rhodia's Comments at 8, citing Bulk Ibuprofen from India, USITC Pub 2428 at 11-12 (finding that ibuprofen, aspirin, and acetaminophen have different chemical compositions and properties).

[34] Response of Rhodia at 36.

[35] CR at I-6, PR at I-5.

[36] CR at I-7 n.17, PR at I-5 n.17.

[37] CR at I-7 n.17, PR at I-5 n.17.

[38] Rhodia's Comments at 11.

and pure aspirin mixed with starch, usually a blend of 90 percent aspirin and 10 percent starch.[39] Processors generally have a preferred mesh size, and their operations would be slowed if they had to use other sizes.[40] Adding starch to aspirin generally makes it more cohesive and easier to process into tablets.[41] Aspirin starch typically is priced higher than pure aspirin.[42]

The volume of imports from nonsubject countries was large and grew steadily over the period of investigation. In 1996, nonsubject import volume of bulk aspirin to the United States totaled 3.4 million pounds, and this volume increased to 6.4 million pounds by 1998. The market share of nonsubject imports also grew from *** percent in 1996 to *** percent in 1998.[43] China is a significant source of these imports.[44]

Finally, the record in the original investigation indicated that subject imports are substitutable with the domestic like product.[45] None of the additional information developed in this review suggests otherwise. Accordingly, based on the facts available, we find that the subject merchandise and the domestic like product are substitutable.

C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.[46] In doing so, the Commission must consider "all relevant economic factors," including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.[47]

The record from the original investigation indicates that the Turkish bulk aspirin industry had the ability and incentive to establish a significant presence in the U.S. market in a short period of time. The volume of U.S. imports from Turkey more than quadrupled from 1984 to 1986, and their market penetration increased from 0.8 percent of apparent U.S. consumption in 1984 to 4.8 percent in 1986.[48] Further, such

---

[39] CR at I-6, PR at I-5.

[40] Rhodia's Comments at 11.

[41] CR at I-6 n.11, PR at I-5 n.11.

[42] CR at I-6, PR at I-5.

[43] CR & PR at Tables I-2 & I-3.

[44] CR at I-9, PR at I-10. Bulk aspirin from China is currently subject to an antidumping investigation. On July 9, 1999, the Commission reached an affirmative preliminary determination in that investigation. See 64 Fed. Reg. 38689-90 (July 19, 1999).

[45] See Original Final Report to the Commission on Investigations Nos. 701-TA-283 (Final) and 731-TA-364 (Final), INV-K-091, July 28, 1987 at A-38 ("producers and importers comment[ed] on the quality and substitutability of bulk aspirin . . . [and] most firms familiar with the Turkish product have found it to be acceptable for most uses and that it regularly meets USP standards"); Dissenting Views of Chairman Liebler, Original Determination. at 12 ("it is clear from the record that domestically produced aspirin and imported Turkish aspirin are substitutable"); Dissenting Views of Vice Chairman Anne E. Brunsdale, Original Determination at 39 (". . . purchasers of aspirin, which is a relatively fungible product, frequently change suppliers and are very sensitive to the price terms quoted by different sources").

[46] 19 U.S.C. § 1675a(a)(2).

[47] 19 U.S.C. § 1675a(a)(2)(A)-(D).

[48] CR & PR at Tables I-2 & I-3.

imports accounted for 6.7 percent of the total volume of U.S. imports of bulk aspirin in 1984 and increased to 31.5 percent by 1986.[49]

The Commission obtained data on capacity from three of the four firms in Turkey that produced bulk aspirin during the original investigation.[50] The capacity of these three Turkish producers remained at a constant 3.1 million pounds between 1983 and 1985, and their production increased from 1.7 million pounds to 2.4 million pounds over the same period.[51] The Turkish producers' exports increased from 0.9 million pounds to 2.3 million pounds over that same period, with the United States receiving 14.5 percent of those exports in 1983 and 63.1 percent in 1985.[52] The volume of bulk aspirin imported from Turkey declined sharply after the order was imposed and declined to zero by 1990.[53]

Several factors support the conclusion that subject (bulk aspirin) import volume is likely to be significant if the order is revoked. The current conditions of competition are similar to those in existence prior to issuance of the order.[54] In the original investigation, the record evidence indicated that Turkish capacity was 3.1 million pounds.[55] In the absence of information to the contrary, for this review we conclude that Turkish capacity is at least 3.1 million pounds.[56] The 3.1 million pounds of Turkish capacity is equal to *** percent of 1998 U.S. consumption.[57] The record in the original investigation showed that Turkish producers were export-oriented and that the majority of their exports was shipped to the United States.[58] [59]

The ability of Turkish exporters to rapidly increase exports to the U.S. is enhanced by their prior and current marketing operations. One Turkish producer, Atabay, tested the U.S. bulk aspirin market by shipping a small amount of bulk aspirin to the United States in 1997.[60] Atabay already has a potential chain of distribution and customers for its bulk aspirin because it sells bulk acetaminophen on the domestic market to some of the same processors that would purchase bulk aspirin.[61] Also, Atabay's major U.S. customer before the imposition of the order, ***.[62]

Another significant purchaser of domestic bulk aspirin in the United States, Bayer Corporation, owns bulk aspirin plants in Turkey and Spain.[63] Bayer once was Rhodia's ***. Bayer currently imports

---

[49] CR & PR at Table I-2.

[50] CR at I-14, P.R. at I-11. The one firm for which data was not available, Ilkim, was believed to be a tableter that produced bulk aspirin solely for captive consumption. CR at I-14 n.27, PR at I-11 n.27.

[51] CR at I-14, PR at I-11.

[52] CR at I-14, PR at I-11.

[53] CR at I-9, PR at I-9.

[54] Chairman Bragg notes in this regard that the SAA states that "[i]f the Commission finds that pre-order conditions are likely to recur, it is reasonable to conclude that there is likelihood of continuation or recurrence of injury." SAA at 884.

[55] CR at I-14, PR at I-11.

[56] In fact, the domestic industry has suggested that Turkish capacity has increased since that time. Response of Rhodia at 13.

[57] Rhodia's Comments at 22.

[58] CR at I-14, PR at I-11. Of the 3.1 million pounds available in 1985, Turkish producers exported 2.3 million pounds, and the U.S. market received 63.1 percent of those exports. Id.

[59] Chairman Bragg infers that, upon revocation, Turkish producers would revert to their historical emphasis on exporting to the United States evidenced in the Commission's original determination. Based upon the record in this review, Chairman Bragg finds that this historical emphasis will likely result in significant volumes of subject imports into the United States if the order is revoked.

[60] CR at I-14, PR at I-11.

[61] CR at I-14 n.30, PR at I-12, n.30; Response of Rhodia at 17.

[62] Response of Rhodia at 17.

[63] Response of Rhodia at 16.

bulk aspirin from its plant in Spain, but ***.[64] In the absence of any information to the contrary, we conclude that Bayer would shift to imports from its Turkish plant to satisfy a significant portion of the demand that cannot be filled by its Spanish product if the antidumping order were revoked.

Based on the foregoing, we find it likely in these circumstances that the exporters who have ceased exporting bulk aspirin to the United States would, upon revocation of the order, reenter the U.S. market, and that the import volume would rise significantly if the discipline of the order were removed.[65] [66] Consequently, we conclude that subject imports would likely increase to a significant level, and would regain significant U.S. market share, absent the restraining effect of the order.

D. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of domestic like products.[67]

The record in this expedited review contains a limited amount of pricing data for the U.S. market. In the original determination, the Commission found domestic prices for bulk aspirin decreased over the period of investigation and that the prices of subject imports from Turkey consistently undersold domestic prices by significant margins. In addition, the Commission found that the prices of Turkish bulk aspirin steadily declined over the period of investigation. Finally, the Commission noted that there were several instances of confirmed lost sales by domestic producers to the Turkish product.[68]

The limited information in the record regarding current pricing further indicates that imports from Turkey would undersell the domestic product and have significant adverse price effects, as they did before the imposition of the order, if the order is revoked. As we have found above, the subject merchandise from Turkey and the domestic like product are substitutable products, and price is an important criterion in the purchasing decision for customers. Turkish aspirin producers thus likely would have an incentive to undersell the domestic producers in order to regain market share.[69] Underselling by imports from Turkey and the likely significant increase in the volume of imports of bulk aspirin from Turkey would likely suppress and depress domestic producers' prices to a significant degree if the order is revoked.

The limited record evidence also suggests that the imports from Turkey would be aggressively priced as was the case in the original determination. For example, in 1998, the average unit value of bulk aspirin exported to third countries from Turkey was $4.50 per pound. This price was *** percent below the domestic price for bulk aspirin at that time.[70]

---

[64] Response of Rhodia at 16.

[65] See SAA at 890.

[66] The record of this five-year review and the record of the original investigation do not contain any information on the levels of inventories maintained by Turkish producers.

[67] 19 U.S.C. § 1675a(a)(3). The SAA states that "[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices." SAA at 886.

[68] Original Determination at 8-9.

[69] Chairman Bragg infers that, in the event of revocation, Turkish producers will revert to aggressive pricing practices with regard to exports to the United States, as evidenced in the Commission's original determination.

[70] Rhodia's Comments at 27.

For the foregoing reasons, we find that revocation of the antidumping duty order would be likely to lead to significant underselling by the subject imports of the domestic like product, as well as significant price depression and suppression, within a reasonably foreseeable time.

E. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.[71] All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.[72] As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.[73]

In the original determination, the Commission found that the domestic industry suffered material injury by reason of increasing volumes of low-priced LTFV imports of bulk aspirin that were gaining an increasing share of the market in which the domestic product directly competed.[74] The Commission also noted that the domestic industry's attempts to modernize had failed to boost the industry's performance in the face of declining sales, profitability, and demand.[75] In addition, the Commission found that the domestic industry's inventories increased over the period of investigation and that inventories as a ratio of domestic shipments were substantial and increased sharply over the same period,[76] while employment levels declined,[77] and profit levels eroded.[78] Also, the Commission found that the industry's investments in capital improvements and research and development did not yield the expected returns. [79]

Since imposition of the antidumping duty order, subject imports exited the market but have been supplanted by imports from other countries. The domestic industry's share of the U.S. market declined in

---

[71] 19 U.S.C. § 1675a(a)(4).

[72] 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. The dumping margins calculated by Commerce under that provision of the statute are as follows: Atabay Kimya Sanayi ve Ticaret, 27.35 percent; Proces Kimya Sanayi ve Ticaret, 38.60 percent; all others, 32.98 percent. 64 Fed. Reg. at 36330.

[73] The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

[74] Original Determination at 8.

[75] Original Determination at 5.

[76] Original Determination at 6.

[77] Original Determination at 6.

[78] Original Determination at 7.

[79] Original Determination at 7.

1997 and 1998 to levels below those in the original investigation.[80] Early in the period examined, the industry's performance was significantly better than during the original investigation. There is insufficient information in the record for us to determine whether that apparent improvement was the result of the antidumping duty order. However, the domestic industry suffered an operating loss in 1998.[81] Thus, the 1998 data suggests that the industry is vulnerable, and it is therefore more susceptible to material injury from the substantial volume of low-priced and highly substitutable imports that would likely result from the revocation of the order.

Given the substitutable nature of the likely imports from Turkey and the domestic product, we find that a significant volume of low-priced subject imports would likely have a significant adverse impact on the production, shipment, sales, and revenue levels of the domestic industry. This reduction in the industry's production, sales, and revenue levels would have a direct adverse impact on the industry's profitability and employment levels as well as its ability to raise capital and make and maintain necessary capital investments. Accordingly, based on the limited record in this review, we conclude that, if the antidumping duty order is revoked, subject imports would be likely to have a significant adverse impact on the domestic industry within a reasonably foreseeable time.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty order on bulk aspirin from Turkey would be likely to lead to continuation or recurrence of material injury to the domestic bulk aspirin industry within a reasonably foreseeable time.

[80] CR & PR at Table I-3.

[81] CR and PR at Table I-1. Rhodia suffered a *** loss in 1998 and the ratio of its operating income to net sales was *** percent. Rhodia only made a gross profit of only *** in 1998 as compared to *** in 1997 and *** in 1996.

DISSENTING VIEWS OF COMMISSIONERS CAROL T. CRAWFORD AND THELMA J. ASKEY

Section 751(d) requires that Commerce revoke a countervailing duty or an antidumping duty order in a five-year ("sunset") review unless Commerce determines that dumping or a countervailable subsidy would be likely to continue or recur and the Commission determines that material injury would be likely to continue or recur within a reasonably foreseeable time.[1] In this review of the order on aspirin from Turkey, we find that material injury is not likely to continue or recur within a reasonably foreseeable time if the order is revoked.

We join our colleagues in their discussion regarding domestic like product and domestic industry and in their explanation of the relevant legal standard. We also join in their discussion of the relevant conditions of competition, but add further observations below.

As a preliminary matter, we note that Rhodia, Inc. (Rhodia), the sole domestic producer of bulk aspirin, was the only interested party to file a response to the Commission's notice of institution; no respondent interested parties chose to participate in the review. We therefore have a limited record to review in determining whether revocation of the order will likely lead to continuation or recurrence of material injury within a reasonably foreseeable time.[2] In a case such as this, where only one party participates in an investigation or review, that party has an advantage in terms of being able to present its information to the Commission without rebuttal from the other side. However, irrespective of the source of information on the record, the statute obligates the Commission both to investigate the matters at issue and to evaluate the data before it in terms of the statutory criteria.[3] The Commission cannot properly accept the participating party's information and characterizations thereof without question and without evaluating other available information.[4] [5]

A. Conditions of Competition

In evaluating the impact of subject imports on the domestic industry if the order is revoked, the statute directs the Commission to evaluate all the relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[6] Discussed below are the conditions of competition that weigh significantly in our determination that revocation of the order is not likely to lead to continuation or recurrence of material injury to the aspirin industry within a reasonably foreseeable time.

In the 12 years since the order went into effect, the domestic aspirin industry has changed significantly. Most important, the domestic industry has been consolidated into a single domestic producer.

---

[1] 19 U.S.C. §§ 1675(d)(2), 1675a(a)(1).

[2] Congress and the administration anticipated that the record in expedited sunset reviews would likely be more limited than that in full reviews and accordingly provided that the Commission's determination would be upheld unless it was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(b)(ii). Nevertheless, even under a more relaxed standard of review, the Commission must ensure that its decision is based on some evidence in the record. See Genentech Inc. v. United States Int'l Trade Comm'n, 122 F.3d 1409, 1415 (Fed. Cir. 1997) (discussing the Commission's decision on sanctions).

[3] 19 U.S.C. § 1675a(a).

[4] See, e.g., Alberta Pork Producers' Mktg. Bd. v. United States, 669 F. Supp. 445, 459 (Ct. Int'l Trade 1987) ("Commission properly exercised its discretion in electing not to draw an adverse inference from the low response rate to questionnaires by the domestic swine growers since the fundamental purpose of the rule to ensure production of relevant information is satisfied by the existence of the reliable secondary data.").

[5] See supra, note 27 in the Majority Opinion, section I. B.

[6] 19 U.S.C. § 1675a(a)(4).

In 1987, at the time of the original investigation, there were four U.S. producers of bulk aspirin: Monsanto Chemical Co.; Dow Chemical, U.S.A.; Sterling Drug, and Norwich-Eaton.[7] Since then, each of these producers has either sold its bulk aspirin manufacturing facilities or ceased production. In 1989, Rhone-Poulenc S.A. purchased Monsanto's analgesics business, including its bulk aspirin plant. In 1995, Rhone-Poulenc acquired Dow's bulk aspirin business as well as its inventory and customer lists. The Sterling Drug and Norwich-Eaton facilities ceased bulk aspirin production in 1994 and 1995, respectively. Rhone-Poulenc created Rhodia in 1997 to handle its specialty pharmaceutical ingredients, including bulk aspirin.

We note that with consolidation of domestic production, the domestic industry now consists of a single producer of bulk aspirin. By quantity, Rhodia captured *** percent of apparent domestic consumption in 1996, *** percent in 1997, and *** percent in 1998.[8] In addition, we note that the volume of imports of bulk aspirin from nonsubject countries has grown substantially over the 1996-98 period. In 1996, nonsubject sources represented *** percent of the domestic market. By 1998, that share had grown to *** percent.[9]

B. General Considerations

The statute directs us to take into account several general considerations.[10] We have taken into account the Commission's prior injury determination, including the volume, price effects, and impact of the subject imports on the industry before the order was issued.[11] In examining the current marketplace for bulk aspirin, we note that several facts point to the existence of a very different marketplace than existed in 1987 at the end of the original period of investigation.

Since that time, market shares have clearly been redistributed. During the original 1984-86 period of investigation, Turkish imports held 0.8 percent, 3.9 percent, and 4.8 percent of the domestic market, respectively; non-subject imports held 11.7 percent, 12.3 percent, and 10.5 percent, respectively; and the domestic producers held 87.5 percent, 83.8 percent, and 84.7 percent, respectively. In contrast, Turkish imports were virtually nonexistent in 1998, while nonsubject imports accounted for *** percent of the market and the domestic producer held *** percent.[12]

---

[7] Rhodia Response at 3-4. Two firms, Monsanto and Dow, accounted for about *** percent of U.S. production and virtually all open-market sales of bulk aspirin. The remaining two producers, Norwich-Eaton and Sterling Drug, captively consumed nearly all of the bulk aspirin they produced. CR at I-6; PR at I-5.

[8] CR and PR at Table I-3.

[9] CR and PR at Table I-3.

[10] 19 U.S.C. § 1675a(a)(1). We are to take into account the Commission's prior injury determinations, consider whether any improvement in the state of the industry is related to the order, consider whether the industry is vulnerable to material injury in the event of revocation, and consider any duty absorption orders made by Commerce. Id. Commerce has not issued a duty absorption finding, so it is not an issue in this review. See 64 Fed. Reg. 36328, 36330 (July 6, 1999). The statute also provides that the Commission may consider the margin of dumping when making its determination. 19 U.S.C. § 1675a(a)(6). Commerce has determined that in the absence of argument or evidence to the contrary, "the margins from the original investigation are the ones most likely to prevail if the order were revoked." 64 Fed. Reg. 36330. Thus, the margins of dumping that will occur if the order is revoked are 27.35 percent for Atabay and 38.60 for Proces. The "all others" rate stands at 32.98 percent. Id.

[11] 19 U.S.C. § 1675a(a)(1)(A). According to the Statement of Administrative Action ("SAA") to the Uruguay Round Agreements Act, if pre-order conditions are likely to recur, it is reasonable to conclude that there is a likelihood of continuation or recurrence of injury. H. R. Rep. No. 103-316, vol. 1 at 884 (1994).

[12] CR and PR at Table I-3.

Between 1986-98, U.S. consumption quantity declined by *** pounds, or *** percent, which resulted in a *** percent drop in the value of the market.[13] However, Rhodia reports that it believes that the long term decline in demand has leveled off.[14]

Moreover, although domestic market share is declining, subject Turkish imports are not a source of competition for the domestic industry. Imports of nonsubject merchandise have become the only significant source of competition for the domestic industry.[15] Given Rhodia's role as the exclusive domestic producer of bulk aspirin and the low volume of Turkish imports, we conclude that the domestic industry is not vulnerable to material injury if the order is revoked.[16]

C. Volume

The Commission is to consider whether the likely volume of subject imports if the order under review is revoked would be significant either in absolute terms or relative to production or consumption in the United States.[17] [18] In so doing, the Commission shall consider "all relevant economic factors," including four enumerated in the statute: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise in countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.[19]

Our focus in a sunset review is whether subject import volume is likely to be significant within a reasonably foreseeable time if the antidumping duty order is revoked. Although the available data suggest that the existing antidumping order in this review has had a significant impact on the market penetration of subject imports, the existing domestic share of the U.S. producer is not likely to be adversely affected if the order is revoked. Following the initiation of the original antidumping investigation, subject imports decreased in 1987 to slightly below their 1984 level. By 1990, subject imports had fallen to zero.[20]

By quantity, U.S. imports of bulk aspirin from all sources increased *** percent from 1996 to 1998. However, subject Turkish imports were negligible or non-existent, totaling a mere *** pounds in 1997 and zero pounds in 1996 and 1998.[21] Thus, nonsubject merchandise accounted for virtually all bulk

---

[13] See CR and PR at Table I-2.

[14] CR at I-13; PR at I-10.

[15] The Commission is currently investigating dumping allegations concerning bulk aspirin from China, and has issued a preliminary affirmative determination with respect to such imports. See 64 Fed. Reg. 38689-90 (July 19, 1999).

[16] Commissioner Crawford finds that the magnitude of any adverse effects of revocation is likely to increase with the degree of vulnerability of the industry. She finds that the domestic industry in this review is not particularly vulnerable to injury if the order is revoked.

[17] 19 U.S.C. § 1675a(a)(2).

[18] In analyzing whether revocation of a order or order would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time, Commissioner Crawford takes as her starting point the date on which the revocation would actually take place. In this review, the order would be revoked in January 2000. 19 U.S.C. § 1675(c)(6)(iv).

[19] 19 U.S.C. § 1675(a)(2)(A)-(D). The SAA indicates that the statutory factors specified for analysis of volume, price, and impact are a combination of those used to determine both material injury by reason of subject imports and threat of material injury in original antidumping and countervailing duty investigations. See SAA at 886.

[20] CR at I-9, Figure I-1; PR at I-6, Figure I-1.

[21] CR and PR at Table I-2, Figure I-1. The small shipment of Turkish imports in 1997 was reportedly made by Atabay as a basis for requesting an administrative review of the antidumping duty order. Rhodia Response at 31-

(continued...)

aspirin imports, maintaining market shares of *** percent in 1996, *** percent in 1997, and *** percent in 1998. By comparison, the domestic industry captured market shares of *** percent, *** percent, and *** percent, respectively.[22] However, we note that while domestic consumption of aspirin has decreased since the original period of investigation, U.S. production of such merchandise over the period has been consolidated in one domestic producer. It is apparent, therefore, that nonsubject imports are the only true source of significant competition to the domestic industry.

Reportedly, three producers of subject merchandise in Turkey are known to have exported to the United States: Bayer Turk Kimya Sanayi ve Ticaret (Bayer Turkey); Atabay Kimya Sanayi ve Ticaret A.S. (Atabay); and Proses Kimya Sanayi ve Ticaret (Proses).[23] However, the current record is almost devoid of any factual information regarding the capacity or production capability of the subject bulk aspirin industry in Turkey.[24]

According to official statistics from the United Nations, total Turkish exports of bulk aspirin decreased by *** percent from 1985 to 1996. Such exports fell another *** percent in 1997. In 1996, Turkish exports of bulk aspirin totaled *** pounds and were valued at $***. In 1997, such exports totaled *** pounds and were valued at $***. Spain, Bulgaria, Germany and Tajikistan were the primary markets for these exports.[25]

Rhodia asserts that Turkish producers have at least the same capacity as they did during the original investigation. In that investigation, the Commission found that three Turkish producers, Atabay, Bayer Turkey, and Proses, had a combined capacity of 3.1 million pounds.[26] According to Rhodia, because current U.S. consumption is *** million pounds, the "known" Turkish capacity from the original investigation amounts to *** percent of current U.S. consumption.[27] Moreover, Rhodia claims that since the UN data show a large gap between known Turkish exports and last-reported Turkish capacity, the Commission must infer that substantial capacity is underutilized or otherwise available to shift to the U.S. market.[28]

We find Rhodia's argument unpersuasive. Such assertions disregard the fact that the Turkish bulk aspirin industry, like the domestic industry itself, appears to have experienced a contraction and consolidation of production. The most recent UN export figures are direct evidence of such circumstances. Accordingly, we conclude from the evidence on the record that Turkish suppliers currently have insufficient available production capacity, inventories, or product shifting capabilities, from which to export bulk aspirin in significant quantities to the United States within a reasonably foreseeable time. We further note that Commerce assigned a zero percent margin to a small shipment of *** pounds of bulk aspirin produced by the Turkish producer Atabay in the course of Commerce's most recent administrative review in 1997.[29] In spite of this zero percent margin, Atabay has neither flooded the market nor exported any additional subject merchandise.

The U.S. market is dominated by a single domestic producer. In addition, nonsubject imports hold a significant share of the U.S. market while subject imports do not compete in the domestic market. Moreover, the available evidence on the record indicates that subject Turkish suppliers are not equipped to export significant quantities of subject merchandise to the United States. Thus, we find that revocation of

---

[21] (...continued)
32.

[22] CR and PR at Table I-3.

[23] Rhodia Response at 31-32. See CR at I-14; PR at I-11.

[24] See CR at I-14; PR at I-12.

[25] CR at I-14, n.29; PR at I-12, n.29.

[26] CR at I-14; PR at I-11.

[27] Rhodia Comments at 22.

[28] Rhodia Comments at 23-24.

[29] 63 Fed. Reg. 34146 (June 23, 1998).

the antidumping order is not likely to lead to an increase in the volume of subject imports such that the likely volume of subject imports would be significant within a reasonably foreseeable time.

D. Price

In evaluating the likely price effects of the subject merchandise in the event of revocation, the Commission shall consider (1) whether imports are likely to be sold at a significantly lower price than the domestic like product, and (2) whether imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of domestic like product.[30]

The record in this review contains no pricing data on subject aspirin in the United States. We therefore have no information comparing current prices of the domestic like product and subject imports in the U.S. market. Consequently, our conclusions regarding the likely price effects if the order is revoked are drawn largely from our conclusions on likely subject volumes and the pertinent known conditions of competition.

Given the fact that the available evidence shows that subject Turkish suppliers do not have the capability of exporting a significant volume of subject merchandise, it is reasonable to conclude that the likely price effects of subject Turkish bulk aspirin would not be significant in the absence of the existing order. Moreover, in light of the sizable market share held by nonsubject imports, it is reasonable to assume that any likely shift in demand toward subject merchandise resulting from a revocation of the existing order would also come partially at the expense of nonsubject imports. In turn, this would tend to further mitigate any price effects associated with the shift in demand away from domestic merchandise.

Consequently, in light of our conclusion regarding the likely volume of subject merchandise in the absence of the existing order and the pertinent known conditions of competition, we find that such subject imports are too minimal to have any discernible adverse price effects within a reasonably foreseeable time.

E. Impact

When considering the likely impact of subject imports, the Commission is to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more enhanced version of the domestic like product.[31]

Subject imports are not likely to have a significant adverse impact on the domestic aspirin industry if the order is revoked. As noted above, there currently are no imports of subject merchandise in the domestic market. By comparison, the domestic industry held *** percent of the market in 1998, while nonsubject merchandise held *** percent,[32] and we have determined that subject imports are not likely to increase to significant levels or significantly influence prices within a reasonably foreseeable time. Furthermore, in light of the significant market share held by nonsubject imports, any increase in subject imports resulting from a revocation of the existing order would also likely come at the expense of nonsubject imports.

---

[30] 19 U.S.C. § 1675a(3). The SAA states that "[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation or termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices." SAA at 886.

[31] 19 U.S.C. § 1675a(a)(4).

[32] CR and PR at Table I-3.

Consequently, we find that subject imports would not be likely to have a significant impact on the domestic aspirin producers' cash flow, inventories, employment, wages, growth, ability to raise capital, or investment within a reasonably foreseeable time in the event the order is revoked. In conjunction with our conclusion regarding likely volume and price effects, we find that revocation is not likely to lead to a significant reduction in U.S. producers' output, sales, market share, profits, productivity, ability to raise capital, or return on investments within a reasonably foreseeable time. We therefore find that revocation is not likely to have a negative impact on the domestic industry in the reasonably foreseeable future.

III. CONCLUSION

Subject imports are not likely to have adverse volume or price effects in the event of revocation, and are therefore not likely to have a negative impact on the domestic industry. Therefore, we determine that revocation of the order in this review would not be likely to lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.